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*\*pro hac vice forthcoming*

Attorneys for Plaintiff Flathead Warming Center

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MONTANA  
MISSOULA DIVISION**

FLATHEAD WARMING  
CENTER,

Plaintiff,  
vs.

CITY OF KALISPELL,

Defendant.

Case No. 9:24-cv-00141-KLD

**PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND EXPEDITED  
HEARING**

Plaintiff Flathead Warming Center ("the Warming Center") respectfully moves for a temporary restraining order pursuant to Fed.

R. Civ. P. 65(b). The Warming Center also requests an expedited hearing, *ex parte* if necessary, on the motion for a temporary restraining order to prevent severe irreparable harms, including severe injury and even death of homeless individuals in Kalispell, Montana. In support of this motion, the Warming Center states as follows:

1. The Warming Center is an I.R.C. § 501(c)(3) Montana nonprofit organization that owns real property in Kalispell at 889 North Meridian Road.
2. The Warming Center provides emergency shelter at night in its 50-bed bunkhouse between October and April, when the average nightly temperature is below freezing.
3. Since opening its doors in December 2020, the Warming Center has operated under a conditional-use permit.
4. The Warming Center was scheduled to open this winter on October 10, 2024.
5. But on September 16, 2024, by a 6-3 vote of its City Council, Defendant City of Kalispell disrupted the longstanding status quo by revoking the Warming Center's conditional-use permit.

6. As a result, the Warming Center cannot lawfully open on October 10, 2024, to shelter the Kalispell homeless in freezing temperatures.

7. This Court is authorized to “issue a temporary restraining order without written or oral notice to the adverse party or its attorney” because there are “specific facts” set forth “in an affidavit or a verified complaint clearly show[ing] that immediate and irreparable injury . . . will result to [the Warming Center] before the adverse party can be heard in opposition[.]” Fed. R. Civ. P. 65(b)(1)(A). The Verified Complaint, accompanying affidavits and evidence, and contemporaneously filed memorandum in support of the Warming Center’s motion for a temporary restraining order explain the imminent and immediate risk of severe bodily injury and death for those with nowhere to sleep in subzero temperatures.

8. Pursuant to Rule 65(b)(1)(B), undersigned counsel hereby “certifies” his “efforts made to give notice[.]” On October 4, 2024, at 11:58 a.m. Mountain Time, undersigned counsel emailed Kalispell City Attorney Johnna Prebble at her email address as published on the City

of Kalispell website: [cityattorney@kalispell.com](mailto:cityattorney@kalispell.com).<sup>1</sup> This email notified the City Attorney that: “My client intends to seek a temporary restraining order in federal court on Tuesday, October 8, 2024, to enable it to shelter the homeless beginning October 10, 2024, when its winter sleeping season was scheduled to commence.” The email made the following request: “Would you stipulate to not enforcing the revocation of the Warming Center’s conditional use permit at least until the court has had an opportunity to rule on the motion for preliminary injunction, which the Warming Center also intends to seek? Given the impending cold weather, this seems like a reasonable compromise with no serious hardship for the City.”

9. On Monday, October 7, 2024, the City Attorney responded via email: “[T]he City’s current position is to oppose a TRO and any Injunction. We have a Council meeting tonight and I will let you know if that response changes after discussion.”

10. A true and correct copy of this email exchange is attached to this motion as Exhibit A.

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<sup>1</sup> See City Attorney, City of Kalispell, <https://www.kalispell.com/212/City-Attorney> (last visited Oct. 8, 2024).

11. Given the manifest risks of subjecting vulnerable homeless people to the self-evident dangers of spending frigid nights on the street, no further notice to Defendant ought to be necessary because nothing Defendant could say would mitigate the imminent threat of severe injury that its permit revocation created.

12. Undersigned Montana counsel and the Warming Center's *pro bono* counsel from the Institute for Justice (motions for *pro hac vice* admission pending) are available for a telephonic, video, or in-person hearing at the Court's earliest convenience.

For the foregoing reasons and those more fully explained in the Verified Complaint, accompanying affidavits and other evidence, and memorandum in support of the Warming Center's motion for a temporary restraining order, Plaintiff Flathead Warming Center asks for a temporary restraining order allowing it to open, thus preserving the status quo until further proceedings may be had.

RESPECTFULLY SUBMITTED this 9th day of October, 2024.

Jeff Rowes\*  
Christen Hebert\*  
INSTITUTE FOR JUSTICE  
816 Congress Ave., Ste 970  
Austin, TX 78701

/s/ David F. Knobel  
David F. Knobel  
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Tel: 406-252-3441

*\*pro hac vice forthcoming*

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that I served true and accurate copies of the foregoing Plaintiff's Motion for Temporary Restraining Order and Expedited Hearing by having a process server deliver to the following:

City of Kalispell  
201 1st Ave. E.  
Kalispell, MT 59901

DATED: October 9, 2024

/s/ David F. Knobel  
*Counsel for Plaintiff*

**From:** Johnna Preble <[jpreble@kalispell.com](mailto:jpreble@kalispell.com)>  
**Date:** October 7, 2024 at 10:41:27 MDT  
**To:** "David F. Knobel" <[dknobel@crowleyfleck.com](mailto:dknobel@crowleyfleck.com)>  
**Cc:** Andrew Clegg <[aclegg@kalispell.com](mailto:aclegg@kalispell.com)>  
**Subject: RE: EXTERNAL Warming Center lawsuit**

This message was received from an external email account. Please use caution when opening messages, attachments or external links from unknown senders.

David,

Regarding the other questions in your email, the City's current position is to oppose a TRO and any Injunction. We have a Council meeting tonight and I will let you know if that response changes after discussion.

I received your away message so I will call your assistant, Ms. Kobold, to request a copy of your filing(s).

Thank you.

**Johnna Preble**

City Attorney  
City of Kalispell  
201 1st Ave. E.  
Kalispell, MT 59901  
406-758-7709  
<image002.png>

**From:** Johnna Preble <[jpreble@kalispell.com](mailto:jpreble@kalispell.com)>  
**Sent:** Saturday, October 5, 2024 12:53 PM  
**To:** David F. Knobel <[dknobel@crowleyfleck.com](mailto:dknobel@crowleyfleck.com)>  
**Subject:** Re: EXTERNAL Warming Center lawsuit

Hi, David. Would you please send me a copy of your filing?

Thank you.

**Johnna Preble**

City Attorney  
City of Kalispell  
201 1st Ave. E.  
Kalispell, MT 59901  
406-758-7709

**EXHIBIT**  
**A**

<image001.png>

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**From:** David F. Knobel <[dknobel@crowleyfleck.com](mailto:dknobel@crowleyfleck.com)>  
**Sent:** Friday, October 4, 2024 11:58:15 AM  
**To:** Johnna Preble <[jpreble@kalispell.com](mailto:jpreble@kalispell.com)>  
**Subject:** EXTERNAL Warming Center lawsuit

Dear Ms. Prebble,

My firm represents the Flathead Warming Center. My client intends to seek a temporary restraining order in federal court on Tuesday, October 8, 2024, to enable it to shelter the homeless beginning October 10, 2024, when its winter sleeping season was scheduled to commence. Federal Rule 65 requires me to certify that I have attempted to give notice of the TRO motion. The motion will raise objections to the unconstitutional deprivation of a vested property right in violation of the United States and Montana constitutions. This email provides the required Rule 65 notice.

Would you stipulate to not enforcing the revocation of the Warming Center's conditional use permit at least until the court has had an opportunity to rule on the motion for preliminary injunction, which the Warming Center also intends to seek? Given the impending cold weather, this seems like a reasonable compromise with no serious hardship for the City. If the City is not prepared to agree to allow the Warming Center to operate until the court rules on a forthcoming preliminary injunction motion, please let me know so I can inform the court in the TRO motion. If I do not hear from you, I will notify the court that I attempted to provide notice, but you did not respond.

I'll send you a courtesy copy of the filing. I'll also let you know if the court agrees to a prompt hearing on the TRO.

Thank you,

David

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